UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: July 23, 1992

FAA Order No. 92-51

In the Matter of:	
IAN G. KOBLICK	Docket No. CP91SO0504

DECISION AND ORDER

Complainant Federal Aviation Administration (FAA) has appealed from the oral initial decision rendered by Chief Administrative Law Judge John J. Mathias at the conclusion of the hearing held in Miami, Florida on December 11, 1991.[1/] The law judge found that Respondent violated neither Section 901(d) of the Federal Aviation Act,[2/] 49 U.S.C. App.

1/ A copy of the law judge's oral initial decision is attached.

2/ Section 901(d) of the Federal Aviation Act, 49 U.S.C. § 1471(d), provides in pertinent part as follows:

> ... [W]hoever while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight shall be subject to a civil penalty of not more than $10,000 which shall be recoverable in a civil action brought in the name of the United States.

§ 1471, nor Section 107.21(a)(1) of the Federal Aviation Regulations (FAR), 14 C.F.R. § 107.21(a)(1).[3/]

On October 13, 1990, inspectors at a security checkpoint at Miami International Airport discovered a loaded .357 Magnum in Respondent's carry-on luggage. Respondent testified that he did not know that his gun was in his carry-on luggage because his wife packed his luggage for him. Respondent holds a valid concealed weapons permit.

The law judge found that Respondent neither knew nor should have known that he had a gun in his carry-on luggage, and exonerated Respondent. Complainant appeals, seeking reversal of the law judge's initial decision. Respondent argues that Complainant's appeal should be dismissed because the law judge's decision was rational, supported by the evidence, and consistent with applicable law.

The law judge applied the correct legal standard in this case: i.e., whether Respondent knew or should have known that there was a weapon on or about his person or accessible property. In the Matter of Degenhardt, FAA Order No. 90-20 (August 16, 1990); In the Matter of Schultz, FAA Order No. 89-5

3/ 14 C.F.R. § 107.21 provides as follows:

> (a) Except as provided in paragraph (b) of this section, no person may have an explosive, incendiary, or deadly or dangerous weapon on or about the individual's person or accessible property--
> (1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area ....

(November 13, 1989). He erred, however, in applying this standard to the facts of this case. Contrary to the law judge's finding, Respondent should have known that the gun was in his luggage. Passengers have a duty to know the contents of their luggage. They are not absolved of this duty when someone else packs their luggage for them. Moreover, individuals who carry personal firearms have a duty to ensure that they do not inadvertently bring those weapons on board an aircraft. In the Matter of Schultz, FAA Order No. 89-5 at 8-9 (November 13, 1989). Examining one's luggage before proceeding through the security checkpoint is not an onerous requirement, particularly when balanced against the heavy risks to large numbers of passengers posed by dangerous weapons. See United States v. Flum, 518 F.2d 39, 45 (8th Cir. 1975).

Because he found no violation, the law judge did not discuss the appropriate amount of a sanction. It is clear from the record, however, that no mitigating factors are present. Inadvertence is not a valid basis for reducing a sanction. In the Matter of Lewis, FAA Order No. 91-3 (February 4, 1991), citing In the Matter of Broyles, FAA Order No. 90-23 (September 14, 1990). And while financial hardship, when proven, can serve as a valid basis for a reduction in sanction, Lewis, FAA Order No. 91-3 (February 4, 1991), Respondent testified that he would be able to pay the proposed sanction of $2,500.

Based on the foregoing, a civil penalty of $2,500 is assessed.[4/]

THOMAS C. RICHARDS, Administrator
Federal Aviation Administration

Issued this 21st day of July, 1992.

4/ Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. App. § 1486), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1991).